Debir Desa Development Sdn Bhd v Pesuruhjaya Bangunan, Kuala Lumpur & Ors

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW APPLICATION NO R2–25–200 OF 2008
ABDUL KADIR MUSA J
10 AUGUST 2009

Statutory Interpretation — Aids to construction — Hansard — Recourse to by court when interpreting statute

Statutory Interpretation — Construction of statutes — Purposive approach — Intention of Parliament — Whether first respondent's act of incorporating joint management body of condominium contravened s 4(1)(a) of the Building and Common Property (Maintenance and Management) Act 2007

Debir Desa Development Sdn Bhd, the applicant, was a licensed housing developer. Amongst its developments was the Medan Putra Condominium ('the condominium') in Mukim Batu, Wilayah Persekutuan which was completed on 4 May 2001. The first respondent was the Commissioner of Buildings for Kuala Lumpur appointed under s 3 of the Building and Common Property (Maintenance and Management) Act 2007 ('the 2007 Act') which came into force on 12 April 2007. The second respondent was the joint management body ('JMB') of the condominium which was duly incorporated on 23 June 2006, pursuant to s 4 of the 2007 Act. The third and fourth respondents were amongst those purchasers who had obtained vacant possession of two units in the condominium. On 7 May 2007, when the applicant opened the book of the strata register ('SRB') in respect of the condominium this led to the eventual incorporation of the Medan Putra Condominium Management Corporation ('the MC') on 4 June 2008, under s 39 of the Strata Titles Act 1985. This section provides that the management corporation consisting of all the parcel proprietors shall come into existence in respect of a subdivided building upon the opening of the SRB and that it shall be a body corporate having perpetual succession and a common seal. A dispute arose between the parties as to the manner in which the JMB and the MC were incorporated. According to the applicant, the MC had been incorporated after the commencement of the 2007 Act ie on 12 April 2007 and as such the first respondent's act of incorporating the JMB contravened s 4(1)(a) of the 2007 Act. As such the applicant submitted that all acts or deeds carried out by or on behalf of the JMB would be ultra vires, illegal or

invalid. The applicant therefore filed its application for judicial review whereby it sought a ruling that the JMB was unlawfully or invalidly incorporated since it was set up after the MC had already been duly incorporated. The respondents opposed this application and urged the court to consider the purpose or the intention of the Legislature in enacting s 4(1)(a) of the 2007 Act. To ascertain the purpose or object of s 4(1)(a) the respondents relied on the relevant *Hansard*.

Held, dismissing the applicant's application with costs:

(1) Taking *Hansard* as an aid to statutory interpretation will be in line with the legislative intention of s 17A of the Interpretation Acts 1948 and 1967. At the same time *Hansard* must be applied for the purpose of assisting to interpret s 4(1)(a) of the 2007 Act and not as a determinative of the issues of the instant application (see para 31).

(2) The subject matter of s 4 of the 2007 Act is styled as 'the Establishment of a Joint Management Body (JMB)', while s 4(1) then deals with when that body is required to be established. According to s 4(1) the JMB should be established when the 'building … intended for subdivision into parcels has been complete'. In the present case the subdivision into parcels and delivery of vacant possession had been completed and hence the applicability of s 4(1) of the 2007 Act (see paras 32 & 34).

(3) Section 4(1)(a) of the 2007 Act can be broken into two parts. Part I starts from 'Before the commencement of this Act …' till 'the management corporation has not come into existence' and Part II starts from 'a JMB …' till '… the commencement of this Act'. Before s 4(1)(a) of the 2007 becomes operative the three factual fabrics in Part I must be fully satisfied. It must be shown that the relevant building was completed; that vacant possession of the building had been delivered to the respective lawful owners; and no management corporation was in existence at that time. However, after the word 'existence' in Part I is a comma followed by Part II. The presence of this comma links both Part I and Part II together to complete a sentence. As such Part I and Part II of s 4(1)(a) have to be read conjunctively and by this section the developer is required to mandatorily and statutorily establish a JMB within the time frame and manner specified by Part II. On the undisputed fact of the present application, there was no doubt that all the three essential ingredients in Part I coexisted before 12 April 2007 and as such the acts of the first respondent were in compliance and in accordance with the relevant provisions of the 2007 Act (see paras 33–38).

[Bahasa Malaysia summary

Pemohon, Debir Desa Development Sdn Bhd, merupakan pemaju perumahan berlesen. Di antara pembangunannya ialah Kondominium Medan Putra ('kondominium') di Mukim Batu, Wilayah Persekutuan yang disiapkan pada 4 Mei 2001. Responden pertama merupakan Pesuruhjaya Bangunan untuk Kuala Lumpur yang dilantik di bawah s 3 Akta Bangunan dan Harta Bersama (Penyenggaraan dan Pengurusan) 2007 ('Akta 2007') yang berkuat kuasa pada 12 April 2007. Responden kedua merupakan badan pengurusan bersama ('BPB') kondominium yang ditubuhkan pada 23 Jun 2006, menurut s 4 Akta 2007. Responden ketiga dan keempat merupakan pembeli yang memperolehi dua unit milikan kosong di kondominium tersebut. Pada 7 Mei 2007, apabila pemohon membuka buku daftar strata ('BDS') berkenaan kondominium, ini membawa kepada penubuhan Syarikat Pengurusan Kondominium Medan Putra ('SP') pada 4 Jun 2008, di bawah s 39 Akta Hakmilik Strata 1985. Seksyen ini memperuntukkan bahawa syarikat pengurusan terdiri daripada semua tuan punya petak akan wujud berkenaan dengan bangunan dipecah bahagi apabila pembukaan BDS dan bahawa syarikat tersebut akan menjadi badan korporat yang berpewarisan kekal dan mempunyai satu meterai yang sama. Satu pertikaian timbul antara pihak-pihak mengenai cara BPB dan SP ditubuhkan. Menurut pemohon, SP telah ditubuhkan selepas penguatkuasaan Akta 2007 iaitu pada 12 April 2007 dan oleh itu tindakan responden pertama yang menubuhkan BPB melanggar s 4(1)(a) Akta 2007. Oleh itu pemohon menghujah bahawa semua tindakan atau surat ikatan yang dijalankan oleh atau bagi pihak BPB adalah ultra vires, menyalahi undang-undang atau tidak sah. Oleh itu pemohon memfailkan permohonannya untuk semakan kehakiman yang mana ia memohon untuk perintah bahawa BPB yang ditubuhkan menyalahi undang-undang atau tidak sah memandangkan ia ditubuhkan selepas SP ditubuhkan. Responden menentang permohonan ini dan mendesak mahkamah untuk mempertimbangkan tujuan atau niat Badan Perundangan dalam menggubal s 4(1)(a) Akta 2007. Untuk memastikan tujuan atau objektif s 4(1)(a) responden bergantung kepada penyata rasmi Parlimen yang relevan.

Diputuskan, menolak permohonan pemohon dengan kos:

(1) Menggunapakai penyata rasmi Parlimen sebagai bantuan kepada tafsiran statutori adalah selari dengan tujuan perundangan dalam s 17A Akta Tafsiran 1948 dan 1967. Pada masa yang sama penyata rasmi Parlimen perlu diguna pakai bagi tujuan membantu dalam mentafsirkan s 4(1)(a) Akta 2007 dan bukannya sebagai penentuan isu-isu dalam permohonan ini (lihat perenggan 31).

(2) Hal perkara s 4 Akta 2007 digubal sebagai 'the Establishment of a Joint Management Body (JMB)', manakala s 4(1) mengenai bila badan tersebut perlu ditubuhkan. Menurut s 4(1) BPB perlu ditubuhkan apabila 'building … intended for subdivision into parcels has been complete'. Dalam kes ini pecah bahagian kepada petak-petak dan serahan milikian kosong telahpun selesai dan oleh itu s 4(1) Akta 2007 boleh diguna pakai (lihat perenggan 32 & 34).

(3) Seksyen 4(1)(a) Akta 2007 boleh dipecahkan kepada dua bahagian. Bahagian I bermula daripada 'Before the commencement of this Act …' sehingga 'the management corporation has not come into existence' dan Bahagian II bermula daripada 'a JMB …' sehingga '… the commencement of this Act'. Sebelum s 4(1)(a) Akta 2007 berkuat kuasa terdapat tiga rangka fakta dalam Bahagian I yang perlu dipenuhi. Ia mestilah menunjukkan bahawa bangunan yang relevan telahpun disiapkan; bahawa milikan kosong bangunan tersebut telahpun diberikan kepada pemilik-pemilik yang berhak; dan tiada syarikat pengurusan yang wujud pada masa itu. Walau bagaimanapun, selepas perkataan 'existence' dalam Bahagian I ialah tanda koma diikuti dengan Bahagian II. Kehadiran koma ini menghubungkan Bahagian I dan Bahagian II untuk menyempurnakan satu perkataan. Oleh itu Bahagian I dan Bahagian II s 4(1)(a) perlu dibaca bersama dan mengikut seksyen ini pemaju secara mandatori dan statutori perlu menubuhkan BPB dalam masa yang ditetapkan dan dengan cara sepertimana yang dinyatakan oleh Bahagian II. Atas fakta yang tidak dipertikaikan dalam permohonan ini, tidak dapat disangsikan bahawa ketiga-tiga unsur dalam Bahagian I telah wujud sebelum 12 April 2007 dan oleh itu tindakan responden pertama mengikut dan menurut peruntukan relevan dalam Akta 2007 (lihat perenggan 33–38).]

Notes

For cases on *Hansard*, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1939–1741.

For cases on purposive approach, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1952–2009.

Cases referred to

All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 6 MLJ 97; [2006] 4 CLJ 195, FC (refd)

Chin Choy & Ors v Collector of Stamp Duties [1979] 1 MLJ 69, FC (not folld)

Dato Mohamed Hashim Shamsuddin v Attorney General, Hong Kong [1986] 2 MLJ 112, SC (refd)

Gilmore's Application, Re [1957] 1 All ER 796, CA (not folld)

Lai Cheng Cheong v Sowaratnam [1983] 2 MLJ 113, FC (not folld)

Lim Phin Khian v Kho Su Ming [1996] 1 MLJ 1, FC (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1, FC (not folld)
Malaysian Bar v Dato' Kanagalingam a/l Velupillai [2004] 4 MLJ 153; [2004] 4 CLJ 194, FC (not folld)
Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal [2007] 5 MLJ 125, FC (not folld)
Pepper (Inspector of Taxes) v Hart and related appeals [1993] 1 All ER 42; [1992] 3 WLR 1032, HL (refd)
Prithipal Singh v Datuk Bandar, Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, intervener) [1993] 3 MLJ 336, SC (refd)
Syed Mubarak bin Syed Ahmad v Majlis Peguam Negara [2000] 4 MLJ 167, CA (not folld)
Tan Boon Liat @ Allen & Anor Et Al, Re; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri & Ors; Chuah Han Mow v Menteri Hal Ehwal Dalam Negeri & Ors; Subramaniam v Menteri Hal Ehwal Dalam Negeri & Ors [1977] 2 MLJ 108, FC (not folld)
United Malayan Banking Corporation Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2) [1988] 3 MLJ 352, HC (not folld)

Legislation referred to

Building and Common Property (Maintenance and Management) Act 2007 ss 3, 4, 4(1)(a), (b), (2), 5, 15, 41
Interpretation Acts 1948 and 1967 s 17A
Rules of the High Court 1980 O 52, O 53, O 92
Strata Titles Act 1985 s 39

Saranjit Singh (Tharminder Singh with him) (Izral Partnership) for the applicant.
Siti Norseha (Abdul Hakim Abdul Rahman & Co) for the first respondent.
Benjamin John Dawson (Ang Soon Roy with him) (Benjamin Dawson) for the second respondent.
Harwinder Kaur (Katherine K Durai with her) (AJ Ariffin, Yeo & Harpal) for the third respondent.
Siti Nornadira (Official Assignee) for the fourth respondent.

Abdul Kadir Musa J:

[1] Debir Desa Development Sdn Bhd, the applicant ('applicant') filed in a leave application for an order of certiorari vide encl 1 on 7 July 2008, and was fixed for mention on 17 July 2008. On the 11 July 2008, the applicant filed in another application, vide encl 5 for an order of injunction against the second to fifth respondents (prayers 1(a)–(c) of encl 5) and for a stay against the first respondent (prayer (2), encl 5). Enclosure 5 was also fixed on 17 July 2008 together with encl 1. Both encls 1 and 5, were dealt with by the learned deputy registrar on 17 July 2008; mainly to determine whether or not there

was any objection by the honourable attorney general. Since there was no positive answer forthcoming from Mr Saranjit Singh (Mr Tharminder Singh with him) learned counsel for the applicant, rightly enough the learned deputy registrar fixed both the said enclosures for mention before me on 18 July 2008.

[2] On 18 July 2008, the court was informed by the aforesaid learned counsel that there was no objection from the attorney general's chambers. Based on that, I accordingly allowed the applicant's prayer (2) of encl 1 with no order as to costs (and agreed by the applicant's learned counsel). I also allowed interim stay and injunction (on an ex parte basis) in respect of the said encl 5 application, but with no order as to costs. Lastly, I ordered that the applicant were to file in their application proper within two weeks from 18 July 2008, and fixed 5 August 2008 for further mention to ensure full compliance with the above orders. It was made very clear that, failure to so comply with the above, I will strike off both the applicant's applications with liberty to file afresh, if need be.

[3] In compliance with the above order, the applicant filed in their judicial review application under O 53 of the Rules of the High Court 1980 ('the 1980 Rules') vide encl 14 on 24 July 2008. That being so, it was thus accordingly fixed for mention to also on 5 August 2008 as encl 5.

[4] On the 5 August 2008 Mr Benjamin John Dawson (Mr Ang Soon Roy with him), learned counsel for the second to fourth respondents, objected to the applicant's encl 5 application and was thus fixed to 6 August 2008 as the hearing date of encl 5. On the basis of 'first come first served', encl 14 was fixed for hearing to 6 March 2013 since all earlier dates were taken by cases registered very much earlier than encl 14 application. It is to be noted that on 5 August 2008 when both encls 5 and 14 were mentioned, there was neither any representative of the first respondent nor from the attorney general's chambers.

[5] Before the said 5 August 2008 mention date, the second and third respondents, on 1 August 2008 filed their application under O 92 of the 1980 Rules to set aside the ex parte injunction of encl 5 application vide encl 17. The applicant, on the other hand, on 5 August 2008 at about 3.30pm filed another leave application for committal proceedings against the second to fifth respondents under O 52 of the 1980 Rules as per their encl 20. Both encls 17 and 20 were fixed for mention on 6 August 2008 together with the aforesaid encl 14. The 6 August 2008 hearing of encl 5 had to be adjourned to the 12 August 2008 at the request of the parties. On that date (6 August 2008), encls 14, 17 and 20 were then fixed for mention to also on 12 August 2008.

[6] On 12 August 2008 the court fixed encls 5, 14, 17 and 20 as follows: **A**

(a) to 13 and 14 November 2008 as hearing for encl 5;

(b) to the same dates for mention of encls 17 and 20; and

(c) to 6 March 2013 as the hearing date for encl 14. **B**

[7] It was also ordered that the status quo as before encl 1 was filed until 14 November 2008.

[8] On 13 November 2008, all the parties agreed and requested the court **C** to bring forward the hearing of encls 14 to 19 and 20 November 2008 (pm) (the dates originally fixed by court for continued hearing of encl 5). If their said request was allowed by the court, they further requested that the 14 and 18 November 2008 hearing dates, also for encl 5 hearing, be vacated. I obliged their said requests by bringing forward the 6 March 2013 hearing **D** date for encls 14 to 19 and 20 November 2008 (pm only; the counsel's free and available dates), vacated the aforesaid 14 and 18 November 2008 hearing dates and encls 5, 17 and 20 were accordingly fixed for mention on 19 November 2008.

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[9] On 19 November 2008, Mr Saranjit Singh informed the court that they were not proceeding against the fifth respondent. That being so, the action against the said fifth respondent was accordingly struck off and proceeded with the applicant's learned counsel's submission in respect of encl 14 application against, the rest of the respondents. On that day, the third **F** respondent, Yap Kai, was represented by learned counsel Miss Harwinder Kaur.

[10] At the start of Mr Saranjit Singh's submission, he tendered (and no **G** objection by all learned counsel for the respective respondents) an 'Undisputed Timeline of Events' marked by me as 'X' and proceeded to highlight the salient facts which were in tendon with X and not disputed by all learned counsel for the respective respondents. Those facts, inter alia, are that:

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(a) the applicant is a licensed housing developer who had developed Medan Putra Condominium ('the condo') in Mukim Batu, Wilayah Persekutuan;

(b) the condo was completed and vacant possession delivered to the all right and lawful purchasers ('the purchasers') on or about 4 May 2001; **I**

(c) the third and fourth respondents are amongst those purchasers who are unit owners of B-10-2 and C-1-8 respectively;

(d) the first respondent is the Commissioner of Buildings for Kuala

Lumpur appointed under s 3 of the Building and Common Property (Maintenance and Management) Act 2007 ('the 2007 Act') which came into force on 12 April 2007;

(e) the second respondent is the 'joint management body' ('JMB') for Medan Putra Condominium established pursuant to s 4 of the 2007 Act which was duly incorporated on 23 June 2008 consequential to its first meeting and appointment of its council members held on 28 May 2008; and

(f) pursuant to and in connection with, direct or indirectly, the issuance of strata titles (with some disputes arising between the applicant, the surveyor and the registrar of titles which was subsequently resolved on 27 June 2006 vide Kuala Lumpur High Court Civil Suit No S5–21–199 of 2004) the applicant opened the relevant strata register book on 7 May 2008 which eventual incorporated the 'Medan Putra Condominium Management Corporation' (the management corporation 'M/C') on 4 June 2008 under s 39 of the Strata Titles Act 1985 ('the 1985 Act').

[11] Even though events per se leading to the incorporation of the aforesaid 'JMB' and 'M/C' were not in dispute, how they were incorporated received adverse opposition by learned counsel for the applicant in relation to the incorporation of 'JMB' by the relevant respondents, and vice versa by the latter in respect of 'M/C' by the applicant. Those objections of theirs are clearly reflected as the main thrusts of their respective submissions.

[12] From the above fact, it was vigorously and in no uncertain term submitted by Mr Saranjit that, by virtue of the opening of the aforesaid strata register book ('SRB') on 7 May 2008 as stated earlier has undisputably given birth to the M/C on 4 June 2008; the date well after the coming into force of the 2007 Act which was on 12 April 2007. Section 39 of the 1985 Act provides, inter alia, as follows:

(1) Upon the opening of a book of the strata register [SRB] in respect of a subdivided building or land there shall, by the operation of this section, come into existence a management corporation consisting of all the parcel proprietors ..., the proprietor of the provisional block or blocks.

(2) The management corporation established by subsection (1) shall be known by the name appearing in the book of the [SRB] ... and shall be a body corporate having perpetual succession and a common seal.

[13] Premised on the above, it was his contention that by such incorporation of the said M/C, s 4(1)(a) of the 2007 Act cannot be invoked by any of the respondents to the detriment of the applicant. A

Section 4(1)(a) of the 2007 Act reads as follows: B

> (1) Where a building or land intended for subdivision into parcels has been completed —
>
> (a) Before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the management corporation has not come into existence, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the commencement of this Act, ... C D

which he contended speaks of the M/C which has not come into existence before the commencement of the 2007 Act (that is, 12 April 2007). As such, the very act of incorporating the aforesaid JMB (that is, the second respondent), contravenes the said s 4(1)(a) aforesaid. Since it is '... a body corporate having perpetual succession and a common seal' by virtue of s 4(2) of the 2007 Act, its such incorporation and all its further acts or deeds carried out by or on behalf of the said JMB would, according to him, be ultra vires, illegal or invalid. That being so, he further contended that, the fact that there is an alternative remedy of its right of appeal under s 41 of the 2007 Act does not bar the applicant from seeking for judicial review of an administrative decision based on the alleged aforesaid contention of illegality or involves a question of law. For that, he relied on the cases of: E F

(1) *United Malayan Banking Corporation Bhd v Syarikat Perumahan Luas Sdn Bhd (No 2)* [1988] 3 MLJ 352 at p 355; G

(2) *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 at pp 37–41; and

(3) *Lai Cheng Cheong v Sowaratnam* [1983] 2 MLJ 113 at p 115. H

[14] He further argued that, save the above, the said s 41 of the 2007 Act speaks of the merit of a decision or factual matter but not of the decision which is as described above or made without jurisdiction. To support the said contention, he quoted and relied on the cases of: I

(1) *Re Gilmore's Application* [1957] 1 All ER 796 at p 801; and

(2) *Re Tan Boon Liat @ Allen & Anor Et Al; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri & Ors; Chuah Han Mow v Menteri Hal Ehwal*

Dalam Negeri & Ors; Subramaniam v Menteri Hal Ehwal Dalam Negeri & Ors [1977] 2 MLJ 108 at pp 109, 114 and 116.

[15] Those contended acts of ultra vires and/or illegality and/or without jurisdiction are direct consequences of unlawfully incorporating the said JMB after the M/C has been duly incorporated under s 39 of the 1985 Act, and was so incorporated after the commencement of the 2007 Act (on 12 April 2007). By then all the purchasers received vacant possession and delivery of their respective units.

[16] Platformed on those facts and the clarity of the said s 4(1)(a) of the 2007 Act and since the said M/C was incorporated after 12 April 2007 as pointed out above, the said s 4(1)(a) does not impose the applicant to establish JMB, once M/C was duely incorporated. Urging the court to accept such contention on the authorities of:

(a) the aforesaid case *Syarikat Perumahan Luas Sdn Bhd (No 2)* [1988] 3 MLJ 352 at p 355;

(b) *Malaysian Bar v Dato' Kanagalingam Velupillai* [2004] 4 MLJ 153; [2004] 4 CLJ 194 at p 200; and

(c) *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97; [2006] 4 CLJ 195 at p 210,

by rejecting any attempt by the respective respondents' counsel to interpret otherwise. However all respondents' counsel recognised that the incorporation of the M/C was in consonant with the requirement(s) of the said s 39 of the 1985 Act.

[17] At this juncture, it is pertinent for me to stress firstly that:

(a) the incorporation of the second respondent, the JMB, was and is the creature of cumulative and/or collective acts of the first, third and fourth respondents;

(b) learned counsel for the respective respondents agreed (with no objection by the applicant's counsel) that Mr Benjamin will submit his case for the second, third and fourth respondents first; and

(c) learned counsel for the first respondent, thereafter, wherever relevant, will fully adopt Mr Benjamin's said submission, and will only make her additional submission if necessary but not otherwise.

[18] Secondly, it is my utmost humble considered conclusion that, it will not cause any gross injustice to any of the parties if I do not analytically deal with 'the right of appeal' under s 41 of the 2007 Act since both parties agreed unequivocally that the success or failure of the applicant's application of this

case pivots as to 'what and how should s 4(1)(a) of the 2007 Act' be legally construed. As such the aforesaid cases of:

(a) *Luas Sdn Bhd (No 2)* [1988] 3 MLJ 352;

(b) *Syarikat Berkerjasama-sama* [1999] 3 MLJ 1;

(c) *Lai Cheng Cheong* [1983] 2 MLJ 113;

(d) *Re Gilmore's Application* [1957] 1 All ER 796; and

(e) *Re Tan Boon Liat* [1977] 2 MLJ 108

will not be that relevant to the applicant in the circumstances of this application. It will be more meaningful for and to both parties after the said s 4(1)(a) of the 2007 Act has been properly interpreted.

[19] If the court rules in favour of the applicant, it will therefore be obvious that the said JMB was invalidly incorporated. If that being the situation, whether by design or otherwise, it would be entirely up to the applicant to take the advantage of the lacuna in law until such a situation being remedied by Legislature. As for any or all the respondents, they are at full liberty to appeal against such decision of this court with the view of having it reversed by the higher court. Likewise, if this court decides in favour of the respondents, the applicants are free to appeal against such decision to the higher court for the reversal of this court's decision which, if successful, would then be in line with the aforesaid submission of the applicant's counsel.

[20] As the applicant deemed fit not to appeal to the relevant state authority under s 41 of the 2007 Act, it will be a most futile exercise for me to labour the court's time to discuss the issue of such appeal since by now the matter will be purely academic. The applicant, by their own choice, has taken away their such right after 14 days from the time the first respondent ordered them to take appropriates steps for the establishment of the JMB required by them under s 4(1)(a) of the 2007 Act. Thus it is next incumbent upon me to interpret the said s 4(1)(a) of the 2007 Act accordingly.

[21] Mr Benjamin, in opposing this application, meticulously canvassed that this court cannot ignore the purpose or the intention of the Legislature enacting the said s 4(1)(a) of the 2007 Act. In support to that he relied, inter alia, to s 17A of the Interpretation Acts 1948 and 1967 ('the Interpretation Acts') which statutorily requires the court to give regard to the purpose of the 2007 Act. The section provides as follows:

> In the interpretation of a provision of an Act, a *construction that would promote the purpose or object underlying the Act (whether* that purpose or object is *expressly stated in the Act or not) shall be preferred* to the construction that would not promote that purpose or object.

(Emphasis added.)

[22] To ascertain that 'purpose or object' of the said s 4(1)(a), he introduced and relied on the relevant *Hansard* in respect of the 2007 Act and, inter alia, to cases of:

(1) *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125;

(2) *Syed Mubarak bin Syed Ahmad v Majlis Peguam Negara* [2000] 4 MLJ 167 at pp 175 and 176; and

(3) *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1.

[23] On those authorities, he strongly persuaded and urged this court that, the applicant's counsel's submission in that respect, cannot be accepted to be a right interpretation of the legislative intention of s 4(1)(a) of the 2007 Act.

[24] The relevant, available *Hansard* of 12 December 2006 Halaman 118 at p 120, as an aid to statutory interpretation (and hence the relevance of the aforesaid *Chor*'s case [1994] 3 MLJ 345 at para (I) cited and relied upon by the applicant's counsel) referred to by Mr Benjamin, inter alia, provides as follows:

> ... (the 2007 Act) ... memperkenalkan satu elemen baru iaitu Badan Pengurusan Bersama ..., Joint Management Body atau JMB yang ditubuhkan dalam tempoh interim *untuk mengambil alih* tugas *dan* tanggungjawab pemaju *dalam* menyelenggara *dan* mengurus harta bersama sesuatu bangunan itu *sehinggalah* hak milik strata diprolehi.
>
> (Emphasis added.)

[25] The JMB referred to above is interim in nature and will subsequently be dissolved after three months from the date of the first meeting of the relevant MC by virtue of 'Fasal 15, Bahagian III' (at p 122 of the said DR 12 December 2006).

[26] By 'Fasal 4, Bahagian 111' of the said *Hansard* mandatorily requires JMB to be incorporated by providing as follows:

> Fasal 4 mengadakan peruntukan bagi *penubuhan JMB yang wajib ditubuhkan setelah* bangunan yang bertujuan dipecah bahagi *telah siap dibina dan VP* [ie *vacant possession] telah diserahkan*.
>
> (Emphasis added.)

[27] Whilst waiting for such incorporation of the required JMB, all aspects of management remain in the hand of the developer ('Fasal 5, Bhg III'). All the aforesaid 'Fasal-Fasal' were later enacted to be ss 15, 4 and 5 of the 2007 Act respectively. The Bill's actual objects were made as preamble to the 2007 Act.

[28] From the above, it is my considered conclusion that those 'Fasal-Fasal' clearly provides beneficial 'aid to statutory interpretation' of s 4(1)(a) of the 2007 Act. Making such reference is not absolutely prohibited by the aforesaid *Chor*'s case as contended by the applicant's counsel. Such reference to the relevant *Hansard* 'as an aid to statutory interpretation' is also recognised in the case of *Pepper (Inspector of Taxes) v Hart and related appeals* [1993] 1 All ER 42; [1992] 3 WLR 1032.

[29] In that context, it was held by Federal Court in the aforesaid *Chor*'s case, at pp 345 and 346, inter alia, as follows:

> (4) ln construing a statute, a reference to ... *Hansard*, *as an aid to statutory interpretation*, should be permitted where the enactment ... which *if* literally construed might lead *to* an absurdity ..., (Emphasis added.)

[30] It is my considered conclusion that, on the undisputed facts of this application, Mr Sarjit's contention if accepted will, in all probabilities, lead to such 'absurdity' spoken of in the said *Chor*'s case.

[31] By taking it as 'an aid to statutory interpretation' will therefore be in line with the legislative intention of s 17A of the Interpretation Acts quoted earlier. Having so concluded, it must however be applied for purposes of assisting to interpret s 4(1)(a) of the 2007 Act, and not as a '... determinative of the issue[s] ...' of the instant application before me. As such, I accept Mr Benjamin's submission in that aspect and reject Mr Sarjit's contention which, by inference, submitted that, the former was '... suggest[ing] fanciful interpretation by reading words into the [said] s [4(1)(a) of the 2007 Act] more so in the absence of any ambiguity'. Thus my close analysis of both the cases of *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69 at p 70H, and the *Malaysian Bar v Dato' Kanagalingam Veluppilai* [2004] 4 MLJ 153; [2004] 4 CLJ 194 could not and do not render any assistance to the applicant's application. The aforesaid s 17A clearly speaks of 'purposive approach' and so was and is s 4(1)(a) of the 2007 Act. I find support in cases of:

(a) *Syed Mubarak bin Syed Ahmad v Majlis Peguam Negara* [2000] 4 MLJ 167; and

A (b) *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125.

which were also cited and relied upon by Mr Benjamin. If the respective courts of those two cases were to decide the present application before me and
B applying their respective dicta, they would have decided, in all probabilities, in the like-manner as they have done so in those two aforesaid cases.

[32] Extension to the above, and to fully appreciate the practical application of the aforesaid s 4(1)(a), a closer analysis of s 4 of the 2007 Act
C as a whole is unavoidable. The subject matter of the said s 4 is styled as 'the establishment of a joint management body [ie JMB]'. As to 'when' that '[e]stablishment' is required to be established is provided by sub-s (1) of the said s 4. It is so statutorily required where '... a building or land intended for subdivision into parcels has been completed —'. If it is not completed, then
D the said s 4 is not applicable. In the present application, the material property, the relevant '... subdivision into parcels has [undisputably] been completed'; hence the applicability of the said s 4(1).

E **[33]** The said s 4(1) deals with two situations, namely:

(a) before the commencement of the 2007 Act (s 4(1)(a)); and

(b) on or after the commencement of the 2007 Act (s 4(1)(b)).

F **[34]** The commencement date of the 2007 Act is 12 April 2007. In the said s 4(1)(a) the respective owners of the 'completed subdivided parcels' have been delivered with vacant possession ('V/P') by the developer before 12 April 2007, and such is the situation in the present application; thus the applicability of the said s 4(1)(a). If delivery of V/P was made on or after
G 12 April 2007, then the aforesaid s 4(1)(b) applies, which on the facts, it is not applicable to the present application. Flowing from such an analysis, the said s 4(1)(a) needs to be examined further.

The said s 4(1)(a) can be broken into two parts. They are:

H (1) that part which starts from 'Before the commencement of this Act ...' till 'the management corporation has not come into existence,' ('Part I'); and

(2) that part which starts from '... a Joint Management Body ...' till '... the commencement of this Act ...' ('Part II').

I

[35] Part I sets out the required factual fabrics within the purview of the aforesaid s 4(1)(a) consideration. They are:

(1) that the relevant building has been completed;

(2) that V/P of the said building has been delivered to the respective lawful owners; and

(3) that no MC was, by then in existence.

[36] Those three factual fabrics must be fully satisfied before 12 April 2007 for the said s 4(1)(a) to be operative. Absence on any one of those three factual fabrics, the said s 4(1)(a) is not applicable. However, Part I by itself is not a full sentence as illustrated below.

[37] At the expense of repetition, the aforesaid Part I read together with the 'common factors' to both paras (a) and/or (b) of s 4(1) of the 2007 Act will demonstratively show as:

> (1) Where a building ... has been completed —
>
> (a) before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the [M/C] has not come into existence,

is clearly not a complete sentence even if the 'comma' after the word 'existence' is substituted with 'a full stop'. It is for that reason that the said Part II of the aforesaid s 4(1)(a) positioned itself after the aforesaid comma. The main thrust of the said Part II is that, it mandatorily and statutorily requires the developer to establish a JMB within the time frame and manner specified by the said Part II. Thus the presence of the aforesaid comma as such, links both Part I and Part II together to complete a sentence as intended by and in the manner as per the said s 4(1)(a). The absence of 'and' after the aforesaid comma, compelled me to conclude that Part II is to be read conjunctively with Part I. If comma is followed by the word 'and', based on the cases of:

(a) *Dato Mohamed Hashim Shamsuddin v Attorney General, Hong Kong* [1986] 2 MLJ 112 at p 122 per Abdoolcader SCJ; and

(b) *Prithipal Singh v Datuk Bandar, Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, intervener)* [1993] 3 MLJ 336 at p 341 per Eusoff Chin SCJ (as he then was).

[38] Part I should then be read disjunctively with Part II; which is not the case with the said s 4(1)(a).

[39] It is also my conclusion that, the word 'and' before the words 'vacant possession' is to be read conjunctively with the 'delivery of vacant possession' referred to above earlier, and so is with the word 'but' appearing before the word 'purchasers'. The said word 'but' is the mandatory qualification for Part

A II to be statutorily operational as explained earlier. To that extent, it can be construed as being conjunctive with the words of:

(a) 'before the commencement of this Act'; and

(b) 'vacant possession of the parcels has been delivered by the developer to
B purchasers.'

[40] It would not be speculative on my parts to rewrite the relevant portion of the said s 4(1)(a) based on the above dissection of the same as follows:

C

(1) Where a building ... for subdivision into parcels has been completed [,]

(a) before the commencement of this Act [,] vacant possession ... has been delivered ... to [the] purchasers [*and*] the [MC] has not came
D into existence, a [JMB] shall be established ...,

(The words in square brackets are substituted, and with emphasis added).

[41] It can be seen from the above that both the '-' and 'and' are substituted
E with ',' whilst the word 'but' is substituted with the word 'and' which has a similar effect of the aforesaid Part I being properly and grammatically connected with Part II of the said s 4(1)(a). However all those three factual fabrics must be present and satisfied 'Before the commencement of the
F [2007] Act'.

[42] On the undisputed facts of this application, there is no doubt in my mind whatsoever, that all those three essential ingredients coexisted before 12 April 2007. That being so, what were done by the first respondent as
G submitted by her learned counsel would therefore, on those facts, be in compliance and in accordance with the relevant provisions of the 2007 Act.

[43] On the premises above, I herewith dismiss the applicant's encl 14 application with costs. Consequentially I also strike off encls 5, 17 and 18
H with liberty to apply; and respective parties to bear their respective costs of their respective enclosures.

Application dismissed with costs.

I Reported by Kohila Nesan